IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5213 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NURUSHA @ NURIYO AHMEDSHA DIWAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5213 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MRS HB PUNANI, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 22/09/2004

ORAL JUDGEMENT

The petitioner has been detained under the

provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 6-4-2004 passed by the District Magistrate, Kheda at Nadiad and has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, detenu cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Heard learned advocate for the petitioner and learned APP for the State. Also perused the material on record. According to learned advocate for the petitioner, the detention order was passed on 6-4-2004 based on three prohibition registered against the detenu and also based on two statements of independent witnesses recorded and verified on 5-4-2004. The only contention raised by the learned counsel for the petitioner is that the detenu has submitted a representation to the authority through advocate on 16-4-2004 and it came to be decided on 17-4-2004 i.e. after the State Govt. has approved the order on 12-4-2004 and there is a delay in deciding the representation. In this connection, he has produced copy of forwarding letter received by the detenu regarding approval of order dated 13-4-204 along with the communication of rejection of representation annexed with this petition as Annexure-D. Learned AGP has fairly admitted the fact that representation has been decided after the State Govt. has approved the order. Learned counsel for the petitioner has relied upon decision of the Apex Court relying on a decision of the Constitutional Bench in K.M.Abdulla Kunhi and B.L.Abdul Khader V. Union of India, (1991) 1 SCC 476 : (1991 AIR SCW 362), in the case of Rajammal Vs. State of Tamil Nadu and another reported in AIR 1999 S.C. 684 as under:

> "Detention-Unexplained delay of five days in considering and disposing detenu's representation-Mere absence of Minister at Headquarters not sufficient to justify delay-Detention vitiated."

It has been further held by the Apex Court in para 9 as under:

> "The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such

delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation.It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned."

4. In the instant case, it appears that though representation has been sent on 16-4-2004, it came to be decided on 17-4-2004, i.e. after the State Govt. has approved the order on 12-4-2004 which makes the detention order illegal. No satisfactory explanation has been put forward by the respondents for the same. As representation of the petitioner has not been decided by the authority in time and that too after the approval of order by the State Government, the rights guaranteed under Article 22(5) of the Constitution of India are violated which also make the order of detention illegal. Therefore, in view of the above judgment of the Apex Court, the continued detention of the detenu is bad and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

6. The petition is allowed. The impugned order of detention dated 6-4-2004 passed against the detenu Nurusha @ Nuriyo Ahmedsha Diwan is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(R.P.DHOLAKIA,J.)
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